

temporary basis because of ill health, vacation, schedule or other reasons.

(b) Arbitrators whose schedules do not permit cases to be heard within six months of assignment are encouraged to make themselves inactive temporarily until their caseload permits the earlier scheduling of cases.

(c) An arbitrator can remain on inactive status without paying any annual listing fee for a period of two (2) years. If an arbitrator is on inactive status for longer than two (2) years, the arbitrator will be removed from the Roster unless he or she pays the annual listing fee.

[75 FR 30705, June 2, 2010]

§ 1404.7 Listing fee.

All arbitrators will be required to pay an annual fee for listing on the Roster, as set forth in the appendix to this part.

Subpart C—Procedures for Arbitration Services

§ 1404.8 Freedom of choice.

Nothing contained in this part should be construed to limit the rights of parties who use FMCS arbitration services to jointly select any arbitrator or arbitration procedure acceptable to them. Once a request is made to OAS, all parties are subject to the procedures contained in this part.

§ 1404.9 Procedures for requesting arbitration lists and panels.

(a) The Office of Arbitration Services (OAS) has been delegated the responsibility for administering all requests for arbitration services. Requests should be addressed to the Federal Mediation and Conciliation Service, Office of Arbitration Services, 2100 K Street, NW., Washington, DC 20427.

(b) The OAS will refer a panel of arbitrators to the parties upon request. The parties are encouraged to make joint requests. In the event, however, that the request is made by only one party, the OAS will submit a panel of arbitrators. However, the issuance of a panel—pursuant to either joint or unilateral request—is nothing more than a response to a request. It does not signify the adoption of any position by

the FMCS regarding the arbitrability of any dispute or the terms of the parties' contract.

(c) As an alternative to a request for a panel of names, OAS will, upon written request, submit a list of all arbitrators and their biographical sketches from a designated geographical area. The parties may then select and deal directly with an arbitrator of their choice, with no further involvement of FMCS with the parties or the arbitrator. The parties may also request FMCS to make a direct appointment of their selection. In such a situation, a case number will be assigned.

(d) The OAS reserves the right to decline to submit a panel or to make an appointment of an arbitrator if the request submitted is overly burdensome or otherwise impracticable. The OAS, in such circumstances, may refer the parties to an FMCS mediator to help in the design of an alternative solution. The OAS may also decline to service any request from a party based on the party's non-payment of arbitrator fees or other behavior that constrains the spirit or operation of the arbitration process.

(e) The parties are required to use the Request for Arbitration Panel (Form R-43), which has been prepared by the OAS and is available upon request to the Federal Mediation and Conciliation Service, Office of Arbitration Services, Washington, DC 20427, or by calling (202) 606-5111. Form R-43 is also available on the FMCS Internet Web site, <http://www.fmcs.gov>. Requests that do not contain all required information requested on Form R-43 in typewritten form or legible handwriting may be rejected.

(f) Parties may submit requests for any standard geographical arbitration panels electronically by accessing the agency's Internet Web site, <http://www.fmcs.gov>, and receive panels via e-mail, fax or mail. Panel requests that contain certain special requirements may not be processed via the agency's internet system. Parties must provide all required information and must pay the cost of such panels using methods of payment that are accepted by the agency.

(g) The OAS will charge a nominal fee for all requests for lists, panels, and

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other major services. Payments for these services must be received with the request for services before the service is delivered and may be paid by either labor or management or both. A schedule of fees is listed in the appendix to this part.

(h) The OAS will charge a fee for all requests for lists, panels, and other major services. Payments for these services must be received with the request for services before the service is delivered and may be paid by either labor or management or both. A schedule of fees is listed in the appendix to this part.

[62 FR 34171, June 25, 1997, as amended at 70 FR 76398, Dec. 27, 2005; 75 FR 30705, June 2, 2010]

§ 1404.10 Arbitrability.

The OAS will not decide the merits of a claim by either party that a dispute is not subject to arbitration.

§ 1404.11 Nominations of arbitrators.

(a) The parties may also report a randomly selected panel containing the names of seven (7) arbitrators accompanied by a biographical sketch for each member of the panel. This sketch states the background, qualifications, experience, and all fees as furnished to the OAS by the arbitrator. Requests for a panel of seven (7) arbitrators, whether joint or unilateral, will be honored. Requests for a panel of other than seven (7) names, for a direct appointment of an arbitrator, for special qualifications or other service will not be honored unless jointly submitted or authorized by the applicable collective bargaining agreement. Alternatively, the parties may request a list and biographical sketches of some or all arbitrators in one or more designated geographical areas. If the parties can agree on the selection of an arbitrator, they may appoint their own arbitrator directly without any further case tracking by FMCS. No case number will be assigned.

(b) All panels submitted to the parties by the OAS, and all letters issued by the OAS making a direct appointment, will have an assigned FMCS case number. All future communications between the parties and the OAS should refer to this case number.

(c) The OAS will provide a randomly selected panel of arbitrators located in geographical areas in proximity of the hearing site. The parties may request special qualification of arbitrators experienced in certain issues or industries or that possess certain backgrounds. The OAS has no obligation to put an individual on any given panel or on a minimum number of panels in any fixed period. In general:

(1) The geographic location of arbitrators placed on panels is governed by the site of the dispute as stated on the request received by the OAS.

(2) If at any time both parties request that a name or names be included, or omitted, from a panel, such name or names will be included, or omitted, unless the number of names is excessive. These inclusions/exclusions may not discriminate against anyone because of age, race, color, gender, national origin, disability, or religion.

(d) If the parties do not agree on an arbitrator from the first panel, the OAS will furnish second and third panels to the parties upon joint request, or upon a unilateral request if authorized by the applicable collective bargaining agreement, and payment of additional fees. Requests for second or third panels should be accompanied by a brief explanation as to why the previous panel(s) was inadequate. In addition, if parties are unable to agree on a selection after having received three panels, the OAS will make a direct appointment upon joint request.

[62 FR 34171, June 25, 1997, as amended at 70 FR 76399, Dec. 27, 2005]

§ 1404.12 Selection by parties and appointment of arbitrators.

(a) After receiving a panel of names, the parties must notify the OAS of their selection of an arbitrator or of the decision not to proceed with arbitration. Upon notification of the selection of an arbitrator, the OAS will make a formal appointment of the arbitrator. The arbitrator, upon notification of appointment, shall communicate with the parties within 14 days to arrange for preliminary matters, such as the date and place of hearing. Should an arbitrator be notified directly by the parties that he or she has been selected, the arbitrator must